

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:** )  
)  
**UNITED CITIES GAS COMPANY, a** )  
**Division of ATMOS ENERGY** )  
**CORPORATION INCENTIVE PLAN (IPA)** )  
**AUDIT** )  
)  
**UNITED CITIES GAS COMPANY, a** )  
**Division of ATMOS ENERGY** )  
**CORPORATION, PETITION TO AMEND** )  
**THE PERFORMANCE BASED** )  
**RATEMAKING MECHANISM RIDER** )

**CONSOLIDATED DOCKET NOS.**  
**01-00704 and 02-00850**

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**STAFF REPLY TO  
ATMOS ENERGY CORPORATION'S POST-HEARING BRIEF**

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The Staff of the Utilities Division, which includes the former Energy and Water Division, ("Staff") submits this reply to the post-hearing brief submitted by Atmos Energy corporation ("Atmos" or the "Company") on November 23, 2004. For ease of reference, this reply will follow the same general format the Company used in its post-hearing brief. Staff has determined that its positions regarding arguments raised by the Company in its post-hearing brief related generally to Staff's audit of the Company's Incentive Plan Account for the period from April 1, 2000 to March 31, 2001 are already contained in the record and that, in lieu of re-submitting the responses in this document, it is most efficient simply to refer to those portions of the record that are relevant to the arguments raised in the Company's post-hearing brief. Staff also notes that it agrees with the substance of Section V of the Company's brief and sees no need to separately restate the arguments put forth by the Company therein.

**I. BACKGROUND OF ATMOS' PERFORMANCE BASED RATEMAKING MECHANISM.**

To the extent that Section I of the Company's post-hearing brief is offered as historical background and not in support of any substantive argument in this matter, Staff has no substantially different account of the background of Atmos' performance-based ratemaking ("PBR") mechanism.

**II. PROCEDURAL BACKGROUND AND TRAVEL OF THE CASE.**

To the extent that Section II of the Company's post-hearing brief is offered as historical background and not in support of any substantive argument in this matter, Staff has no substantially different account of the procedural background of this matter.

**III. ATMOS IS NOT ENTITLED TO SHARE IN THE SAVINGS FROM NEGOTIATED TRANSPORTATION DISCOUNTS UNDER THE TERMS OF THE CURRENT PBR PLAN (DOCKET NO. 01-00704).**

***A. Atmos' Claims That It Made Extraordinary Efforts to Negotiate the Discounted Transportation Contracts, Even If Accepted as True, Do Not Entitle the Company to Share in the Savings from Negotiated Transportation Discounts Under the PBR Plan.***

***B. Atmos's Claims That It Met With TRA Staff to Inform Them of the Discounts It Had Negotiated, Even if Accepted as True, Do Not Entitle the company to Share in the Savings from Negotiated Transportation Discounts Under the PBR Plan.***

***C. The Staff Did Not Approve the Company's Method of Calculating Savings, The Staff Had No Power To Do So, and the Doctrine of Estoppel DOES NOT Bar the Findings of the Audit.***

The Company's claim of reliance on Staff inaction when informed of the Company's intention to include "savings" from discounted transportation contracts is unreasonable. See *Notice of Filing By Energy and Water Division of the Tennessee Regulatory Authority*, pp. 14-16 (April 10, 2002); *Brief in Support of Motion for Summary Judgment*, pp. 28-31 (July 31, 2002). Proof at the Hearing of this matter on October 19, 2004, established that all of the transportation

contracts that were discussed at the single meeting between Staff and the Company upon which the Company claims to rely were executed *prior to* the meeting and *were not* contingent upon Staff's approval. All of the rights and responsibilities, benefits and burdens, that the Company was to receive under these transportation contracts accrued *prior to* the meeting. All of the Company's benefits and burdens under these transportation contracts would continue regardless of the outcome of the meeting. It is therefore impossible for the Company to claim that it acted to its detriment in reliance upon anything that may have taken place at the meeting. See *Transcript of Proceedings*, pp. 13-16 (October 19, 2004).

**D. *The Savings From the Transportation Discounts Are Not "Captured" Under the Current PBR Plan Through the Application of the Transportation Cost Adjuster.***

Transportation, as an aspect of the total price of gas, is not included in the PBR plan. See *Notice of Filing By Energy and Water Division of the Tennessee Regulatory Authority*, pp. 10-11, 15-16 (April 10, 2002); *Brief in Support of Motion for Summary Judgment*, pp. 22-28 (July 31, 2002).

**IV. ATMOS IS NOT ENTITLED TO SHARE IN THE SAVINGS FROM THE NORA CONTRACT UNDER THE TERMS OF THE CURRENT PBR PLAN (DOCKET NO. 01-00704).**

There is no need to amend the Staff's Audit Report to include the Company's calculations for the NORA purchases because inclusion of the NORA purchases in the calculations results in no savings. See *Notice of Filing By Energy and Water Division of the Tennessee Regulatory Authority*, p. 19 (April 10, 2002); *Brief in Support of Motion for Summary Judgment*, pp. 33-36 (July 31, 2002).

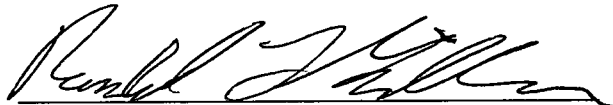
**V. THE TIF TARIFF PROPOSED BY ATMOS IS JUST AND REASONABLE AND IN THE BEST INTERESTS OF THE COMPANY AND THE CONSUMER (DOCKET NO. 02-00850).**

Staff agrees with and supports the Company's position regarding the TIF Tariff (Docket No. 02-00850) as reflected in Section V of the Company's post-hearing brief.

**VI. CONCLUSION.**

The PBR plan as established by the current tariff does not provide for the inclusion of transportation savings and the Company's objections to Finding Nos. 2 and 3 of the Compliance Audit Report filed on April 10, 2002 are without merit. The problems identified by the Compliance Audit Report in Docket No. 01-00704 regarding transportation savings not being included in the PBR plan are remedied with the Company's proposed amendment to the PBR plan as set forth in its *Petition to Amend the Performance Based Ratemaking Mechanism Rider* (Docket No. 02-00850). The Staff agrees with the Company that the proposed TIF tariff should be approved effective April 1, 2001.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Randal L. Gilliam', is written over a horizontal line.


Randal L. Gilliam  
for Staff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following this the 13 day of December, 2004.

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